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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MONICA ANN COOPER,

Defendant and Appellant.

C059151

(Super. Ct. No.  
CM022977)

Defendant Monica Ann Cooper pleaded no contest to possession of methamphetamine for sale (Health & Saf. Code, § 11378--count 1) and misdemeanor child endangerment (Pen. Code, § 273a, subd. (b)--count 2) in exchange for dismissal of other charges against her. She was released on her own recognizance for nearly two years, after which the trial court suspended imposition of sentence and placed her on four years' formal probation. Defendant subsequently admitted violating probation after testing positive for methamphetamine. The court revoked probation and sentenced defendant to two years in state prison, minus 225 days of presentence custody credit.

On appeal, defendant contends the trial court's revocation of probation was an abuse of discretion. She also contends she is entitled to nine additional days of custodial credits. We will affirm the judgment.

#### FACTUAL AND PROCEDURAL HISTORY

On June 13, 2005, narcotics task force agents executed a search warrant at defendant's home. There they encountered defendant, Kenneth Beltramo (defendant's boyfriend) and Deziere Montero. Defendant's eight- and 10-year-old sons were also present in the house. Agents found 5.2 grams of methamphetamine, 0.6 grams of marijuana and a set of scales hidden under the floor vent. Drug paraphernalia was found about the house, including syringes, straws, a broken glass pipe, empty plastic bags and pay-owe sheets. Several guns were found in a locked closet. The home telephone rang repeatedly during the search. Agents answered one call and spoke with a woman who wanted to trade items for methamphetamine.

Agents determined defendant was under the influence of a controlled substance. She denied having used drugs and refused to provide a urine or blood sample. She further denied any knowledge of the methamphetamine and claimed she was unaware of anything illegal going on inside the home.

Defendant and Beltramo were both arrested. Defendant was charged in case No. CM022977 with possession of methamphetamine for sale (count 1), felony child endangerment (count 2), and

possession of a controlled substance (count 4)<sup>1</sup> and released on her own recognizance (OR) subject to specified conditions. Her two young children were placed under the care of Children's Services Division.

On August 18, 2005, narcotics task force agents conducted an OR search at defendant's home and found a set of scales. During the search, defendant was argumentative and confrontational. Agents determined she was under the influence of a controlled substance. She was arrested and charged in case No. SCR-51523 with being under the influence of a controlled substance, a misdemeanor. (Health & Saf. Code, § 11550, subd. (a).)

On November 30, 2005, defendant pleaded no contest in case No. CM022977 to counts 1 and 2 (count 2 was reduced to a misdemeanor). The remaining charges were dismissed, as was the pending charge in case No. SCR-51523. Defendant was again released on OR subject to the prior conditions pending sentencing.

For the next two years, defendant remained on OR while her sentencing was continued for various reasons, namely to review her progress both in treatment programs and with reunification services in the pending juvenile dependency matter.

On September 11, 2007, nearly two years after defendant entered her plea, the court suspended imposition of sentence

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<sup>1</sup> The remaining counts contain charges against Beltramo.

and, against the recommendation of the probation department, placed defendant on formal probation for four years. As a condition of probation, defendant was ordered to serve 180 days in county jail.

On May 6, 2008, defendant admitted violating probation by testing positive for methamphetamine. Finding defendant "has been tried on probation in this matter and has failed," the court revoked probation and sentenced defendant to an aggregate term of two years in state prison. The court awarded defendant 225 days of presentence custody credit.

Defendant filed a timely notice of appeal.

#### DISCUSSION

##### I

##### *Denial of Probation*

Defendant contends the trial court's denial of probation based on the finding that she has been "tried on probation . . . and has failed" was arbitrary and therefore an abuse of discretion. We disagree.

A trial court possesses extensive discretion in making the decision to revoke probation. (*People v. Angus* (1980) 114 Cal.App.3d 973, 988.) "'A denial or a grant of probation generally rests within the broad discretion of the trial court and will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner.'" [Citation.] A court abuses its discretion 'whenever the court exceeds the bounds of reason, all of the circumstances being considered.' [Citation.] We will not interfere with the

trial court's exercise of discretion 'when it has considered all facts bearing on the offense and the defendant to be sentenced.' [Citation.]" (*People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.)

At sentencing, the court read and considered the original probation report and three supplemental reports, along with a letter of acceptance from Skyway House, a residential treatment program, and letters from two friends of the defendant. According to the various probation reports, defendant initially denied dealing drugs. She admitted she "took orders and delivered" them, and admitted taking telephone calls and going to "get the customers' drugs to 'hook [Beltramo] up' because she 'knew where to get it.'" She denied dealing drugs from the house, stating, "I don't shit where I eat." She denied using methamphetamine in the home when her children were present, and claimed never to have used in front of the children. Defendant told the social worker, "I have a disease of addiction," but stated she did not need residential drug treatment and claimed to have completed a drug diversion program in 1981. She stated she would like "services to maintain sobriety."

As of January 31, 2006, defendant had "not been complying with her reunification plan," she tested positive for methamphetamine, and she failed to complete required parenting classes. Her case with Butte County Alcohol and Drug Services was closed "for not attending required classes and counseling." She failed to attend some supervised visits with her children

and was asked to leave other visits due to her "hostile and angry" behavior.

On May 2, 2006, the court continued defendant on OR for 30 days to allow her to enroll in an inpatient program at Northern California Treatment Center (NCTC). However, she did not enroll until May 11, 2006, and, upon arrival, was defiant with staff and appeared to be under the influence. She admitted having used drugs the day before. She did not fully participate with the program or follow the rules during her first week. Although staff addressed the problem with defendant several times, her defiance persisted and she was terminated from the program on May 19, 2006, after just nine days.<sup>2</sup>

Over the course of the next year, the court continued defendant on OR and reviewed her progress. During that period, defendant attempted to get into the Skyway House program and actually participated in the Salvation Army program. When she was diagnosed with bipolar disorder, she was referred to the Butte County Behavioral Health Department outpatient treatment program, where she participated in alcohol and drug services.

In June 2007, the Butte County Behavioral Health Department reported that defendant was complying with all conditions of the program. However, Children's Services Division reported that defendant's dependency proceeding had been dismissed three months earlier after primary custody of defendant's children was

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<sup>2</sup> Defendant informed the court she was removed from the NCTC because she had contracted scabies there.

given to the father, and that defendant's case with Children's Services Division had also been closed because of her failure to complete her reunification plan requirements.

According to the probation department, defendant had not made contact since May 8, 2007, and failed to appear for a scheduled appointment on June 22, 2007.<sup>3</sup> Probation noted that defendant had "shown little effort to provide information as requested or in a timely manner."

Following her admitted probation violation, defendant told social workers she had been clean for almost two years and used methamphetamine because she ran into an ex-boyfriend. She explained that her sponsor was out of town and she was unaware that there was a 24-hour support hotline available. She stated, "relapse is part of recovery," and explained that she has serious mental health issues. She requested "one shot at probation," urging that she should be given 30 days in custody and reinstated on probation.

Defendant argues her progress on probation warranted reinstatement of probation with a referral to a residential drug treatment program. She urges that, at the time of the first probation report in January of 2006, she was unemployed, in debt, heavily involved in drugs, noncompliant with her reunification plan, and had missed visits with her children and

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<sup>3</sup> Defendant left a message for the social worker on June 22, 2007, stating she had been out of town and would return the following week.

failed to attend alcohol and drug counseling. However, since that time and prior to violating probation, she attended parenting classes, Narcotics Anonymous and group therapy sessions, participated in her reunification services, and tested clean (but for admitting having used on May 10, 2006). She asserts that, given her difficult childhood and a life full of physical abuse and drugs, in conjunction with various mental health issues (including bipolar disorder, ADHD and PTSD), her progress in the various treatment programs is "nothing short of *incredible*." She asserts that, in discussing her failures in dependency court, the probation department "took little heed" of her progress in overcoming addiction, getting housing and SSI benefits and enrolling in college. We are not persuaded.

The record is clear that the court considered all of defendant's accomplishments, noting that she "has managed to accomplish some things that are really quite admirable." However, the record is also clear that the court was as concerned about defendant's participation and progress in reunification services as it was with her progress in treatment, educational and counseling programs. Defendant was placed on probation notwithstanding the Department's recommendation otherwise. At that time, the court noted that it was "willing to give [defendant] one opportunity to build upon some of her successes that she's already achieved." During the nearly two years defendant remained on OR, the court continued sentencing at least six times to allow defendant the chance to participate and to review her progress in programs and reunification



services. Defendant's efforts at drug rehabilitation are well documented and laudable; however, she continues to struggle with that issue, as evidenced by the fact that she used prior to entering NCTC in May 2006 and relapsed again two years later when she ran into an ex-boyfriend, despite that she is studying to be a drug and alcohol abuse counselor. In stark contrast to her efforts at drug rehabilitation, defendant's efforts in the dependency proceeding were seriously lacking, as evidenced by the fact that, in March 2007, the dependency proceeding was dismissed and her case with Children's Services Division was closed because of her failure to complete reunification plan requirements.

Having taken all of these facts into consideration, the court found defendant's efforts on probation were unsuccessful and terminated probation. Defendant did not meet her burden in showing that decision was irrational or arbitrary. (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831.)

Defendant claims the court was misinformed by an apparent error in the most recent supplemental probation report, which states that defendant "completed the Skyway Intensive Outpatient program." It does appear from the record that defendant applied for and was accepted into the Skyway House program, but had neither attended nor completed that program as of the time the report was written. It is, however, unlikely that the court was misguided by the error given the letter from Skyway House to the court, attached to the report, stating defendant had been accepted into the residential treatment program and "[a]fter

completing the Residential Treatment Program she will enter our Outpatient Program." In any event, there is nothing in the record to suggest that the error had any significance in the court's determination. Indeed, the record is well documented with defendant's efforts at various programs and services, as well as the fact that she was successful in acquiring her driver's license, securing employment and enrolling in college. The record also reflects defendant's failures with regard to her reunification plan requirements, and her continuing difficulties with drug treatment and taking full responsibility for her actions.

There was no abuse of discretion.

## II

### *Custody Credit*

Defendant contends she is entitled to nine additional days of custody credit for time she spent at NCTC from May 11, 2006, to May 19, 2006.

Subsequent to the filing of defendant's opening brief and respondent's brief, defendant sent a letter to the trial court dated June 18, 2009, requesting modification of custody credits. We take judicial notice of the amended abstract of judgment filed by the trial court on July 9, 2009, reflecting a total of 240 days of custody credit awarded to defendant. Given the trial court's resolution of this issue as requested by defendant, the claim is moot.

DISPOSITION

The judgment is affirmed.

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BLEASE, Acting P. J.

We concur:

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ROBIE, J.

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CANTIL-SAKAUYE, J.